



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,282	04/10/2001	Kelly Olsen	10209.123	8316

21999 7590 04/06/2005

KIRTON AND MCCONKIE
1800 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
P O BOX 45120
SALT LAKE CITY, UT 84145-0120

EXAMINER

LASTRA, DANIEL

ART UNIT PAPER NUMBER

3622

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,282

Applicant(s)

OLSEN ET AL

Examiner

DANIEL LASTRA

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-29 have been examined. Application 09/832,282 (METHOD FOR UNILEVEL MARKETING) has a filing date 04/10/2001.

Response to Amendment

2. In response to Non Final Rejection filed 09/28/04, the Applicant filed a request for reconsideration.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 3, 4, 7-9, 11 and 13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the instant claims fail to recite the use of any type of technology (e.g. computer system) within the recited steps of crediting a sales representative with a sale.

Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

Although the claimed invention produces a useful, concrete and tangible result, since the claimed invention as a whole is not within the technological arts, as explained above, claims 1, 3, 4, 7-9, 11 and 13 are deemed to be directed to non statutory subject matter.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 12-21, 23 and 26-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Landau et al (US 2002/0082919).

As per claim 1, Landau teaches:

A method of unilevel marketing and distribution comprising the steps of:

receiving personal information regarding a referred customer from a sales representative (see paragraphs 50)

incorporating said personal information into promotional material (see paragraphs 57, 65, 66; 102, 105; figure 7), distributing said promotional material directly to the referred customer from a centralized distributor (i.e., affiliate server 260; see paragraphs 50, 65 and 66)

receiving orders from referred customers, wherein said orders include means for identifying the sales representative and crediting the sales representative with a sale from the distributed promotional goods (see paragraphs 21, 72).

As per claim 2 Landau teaches:

The method of claim 1, wherein the personal information received from the sales representative is received over the world wide computer network using a web page accessed by the sales representative (see paragraph 50).

As per claim 3 Landau teaches:

The method of claim 1, teach wherein the personal information includes a personalized message from the sales representative (see figure 7, item "Welcome Gretta")

As per claim 4, Landau teaches:

The method of claim 1, teach wherein the sales representative is paid a commission for being the sale representative who referred the customer making the purchase (see paragraph 21).

. As per claim 5 Landau teaches:

The method of claim 1, wherein said personal information is received over the Internet (see paragraph 50).

As per claim 6 Landau teaches:

The method of claim 1, but fails to teach wherein the personal information is received via E-mail (see paragraph 50).

As per claim 7 Landau teaches:

The method of claim 1, wherein the personal information is received via a telephone (see paragraph 50).

As per claim 12 Landau teaches:

The method of claim 1, wherein the personal information is received by a distributor is stored in machine memory (see paragraph 50; affiliate server, figure 2, item 260).

As per claim 13 Landau teaches:

The method of claim 1, wherein the personal information received from the sales representative is stored in a customer database (see paragraph 50).

As per claim 14 Landau teaches:

The method of claim 1, teach wherein the promotional materials are transmitted to the customer over the Internet in the form of electronic mail (see figure 7).

As per claim 15 Landau teaches:

The method of claim 1, wherein the customer purchases over the Internet (see paragraph 72).

As per claim 16 the same rejection applied to claims 2 and 13 is applied.

As per claim 17 the same rejection applied to claim 2 is applied to claim 17.

As per claim 18 the same rejection applied to claim 3 is applied to claim 18.

As per claim 19 the same rejection applied to claim 5 is applied to claim 19.

As per claim 20 the same rejection applied to claim 6 is applied to claim 20.

As per claim 21 the same rejection applied to claim 7 is applied to claim 21.

As per claim 26 the same rejection applied to claim 12 is applied to claim 26.

As per claim 27 the same rejection applied to claim 13 is applied to claim 27.

As per claim 28 the same rejection applied to claim 14 is applied to claim 28.

As per claim 29 the same rejection applied to claim 15 is applied to claim 29.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau et al (US 2002/0082919).

As per claims 8 and 22, Landau teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in an audio form. However, Official notice is taken that it is old and well known in the computer art to use video and/or audio when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary

skill in the art at the time the application was made, to know that Landau would send audio promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claim 9, Landau teaches:

The method of claim 1, but does not expressly teach wherein the promotional materials are in printed form. However, Official Notice is taken that it is old and well known in the computer art to print emails in paper form using a computer printer. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that users of the Landau's system would print emails in paper form so said users have accessed to said emails when not connected to the Internet.

As per claims 10 and 24, Landau teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in a video presentation format. However, Official notice is taken that it is old and well known in the computer art to use video when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would send video promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau et al (US 2002/0082919) in view of Hammons (US 6,477,509).

As per claims 11 and 25, Landau teaches:

The method of claim 1, but fails to teach wherein the personal information provided by the sales representative includes the customer's age, interests, income level, or household. However, Hammons teaches a system that target promotions to customers based upon said customers' age, interest or income level (see Hammons column 2, lines 15-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would use the customers' age and income levels, as taught by Hammons to better target advertisements to said customers.

Response to Arguments

6. Applicant's arguments, filed 01/03/05, with respect to the rejection(s) of claim(s) 1-29 under Hammons have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Landau et al (US 2002/0082919) and Hammons (US 6,477,509).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Kleinberg teaches a method for on-line retailing of insurance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

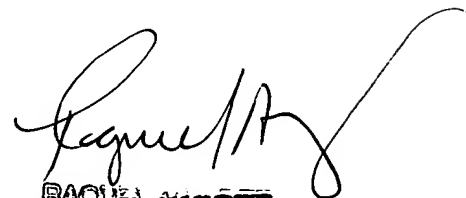
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

The Examiner is scheduled to move to the new Alexandria office in April 2005 (or later). The Alexandria phone number would be 571-272-6720 and RightFax number 571-273-6720. The examiner's supervisor, Eric W. Stamber, new Alexandria number would be 571-272-6724. The current numbers would be in service until the move.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra
March 29, 2005


RAQUEL ALVAREZ
PRIMARY EXAMINER